IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 10 OF 2003

Shri Ubjalal Pun,
S/o. Tulbahadar Pun,
Central Jail Aguada,
Siquerim, Bardez, Goa. ... Appellant.

versus

State of Goa,
as represented by
Officer-in-Charge,
A.N.C. Police Station,
Panaji-Goa. ... Respondent.

Miss Amira Razak, Advocate for the Appellant under Legal Aid Scheme.

Mr. S. N. Sardessai, Public Prosecutor for the State/ Respondent.

CORAM: P. V. HARDAS, J.

DATED: 1ST OCTOBER, 2003.

ORAL JUDGMENT

The Appellant challenges his conviction for an offence punishable under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985 and sentence of Rigorous Imprisonment for 10 years and fine of Rs.1,00,000/-, in default Simple Imprisonment

for 6 months, passed by the Special Judge, Narcotic Drugs and Psychotropic Substances Court, Mapusa, by Judgment dated 2nd December, 2002, in Special Criminal Case No. 15 of 2001.

2. The facts as are necesary for the decision of this Appeal are set out hereunder:-

P.W.4, Uday Naik, was attached to the Anti Narcotic Cell Police Station as Police Sub Inspector. On 13th January, 2001, at about 1 p.m., he received a specific and reliable information that one Nepali person, short in height, with long face, medium built and of wheatish complexion would come near Baga Beach, Calangute, Goa, for delivering consignment of charas to his customers between 7.30 p.m. to 9.00 p.m. The said information was reduced into writing and a copy was handed over to P.W.5, Dy.S.P. Finton D'Souza. A copy of the said information along with the covering letter is at Exh.21 colly. Thereafter, at about 5.30 p.m., the presence of two panch witnesses namely P.W.3, Francis Fernandes and one Shrikar Lokre was secured. The panch witnesses were informed about the information received by P.W.4, P.S.I. Uday Naik. The panchas were also informed that a copy of the information was handed over to P.W.5, Dy.S.P. Finton D'Souza. Both the panch witnesses agreed to act as

panch. They were thereafter introduced to the members of the raiding party which consisted of P.W.5, Dy.S.P. Finton D'Souza and Police Constables. At about 6 p.m., the members of the raiding party including the panchas left the Police Station for raid at Baga, Calangute,Goa. P.W.4, P.S.I. Uday Naik, carried the seal of the Anti Narcotic Cell Panaji Goa-2 with Ashoka Emblem. One Police Constable Vishal Bhuimbar carried a kit box containing weighing, packing, sealing materials and torches etc. One other Constable carried with him a typewriter. The members of the raiding party reached the place of the incident at about 6.30 p.m. and parked their vehicles near the bridge. The members of the raiding party concealed their presence near the bridge. At about 8.45 p.m. they saw two persons coming towards the bridge. The said two persons were talking to each other. The description of one of the persons from amongst the two persons tallied with the description received earlier. The said person was carrying one bag in his right hand. The members of the raiding party immediately rushed from the place of concealment and surrounded the said person who has been identified during the trial as the Accused. P.W.4, P.S.I. Uday Naik, introduced himself as Police Sub Inspector of Anti Narcotic Cell, Panaji. On being asked, the Accused disclosed his name as Ubjalal Tulbahadur Pun and the

second person disclosed his name as Gopal Shresta, Nepali National. The members of the raiding party were thereafter introduced to the Accused. In respect of the second person accompanying the Accused, a separate charge-sheet was filed and the case has been accordingly disposed of.

3. P.W.4, P.S.I. Uday Naik, informed the Accused that he had received specific information and had told the Accused that he wanted to take his search. The Accused was also informed that he had a right to be searched before a Gazetted Officer or a Magistrate but the Accused declined to exercise the said right. The Accused was also informed that he had a right to search the members of the raiding party but the Accused also declined to exercise the said right. The Accused was then asked to hand over the bag which he was carrying in his right hand. The said bag was of pink colour without any handle and partly in a torn condition. The bottom end of the bag was tied with a plastic band. The search of the bag yielded blackish substances in different sizes and shapes, some wrapped in transparent polythene papers and some pieces were devoid of any wrapping. On observing the said pieces, P.W.4, P.S.I. Uday Naik, informed the panchas that the said substance was suspected to be charas. All the pieces were weighed and it was found to weigh

2.400 kgs. All the pieces of the substances were then put back in the said pink colour bag and the bag was thereafter put in an envelope. The envelope was packed and sealed with 7 seals of Anti Narcotic Cell Panaji Goa-2 with Ashoka Emblem. The sealed envelope was signed by P.W.4, P.S.I. Uday Naik, the panch and the Accused. During the search of his T-shirt and the pant which the Accused was wearing, nothing incriminating was found. The Accused was then informed that possession of charas was an offence and was asked to produce legal documents but he could not produce the same. Thereafter, he was arrested after explaining to him the ground of arrest and was taken into custody. The search of the members of the raiding party was once again offered but the Accused declined to search the members of the raiding party. A panchanama of the entire sequence of events was drawn and the same is at Exh.16 colly. On return to the Police Station, P.W.4, P.S.I. Uday Naik, lodged his complaint at Exh.18 and registered an offence against the Accused. The seal of the Police Station was handed over to P.W.5, Dy.S.P. Finton D'Souza. The seized drugs were entered in the muddemal register and were sent for onward transmission to P.W.2, Krishna Shetgaonkar.

4. P.W.2, Krishna Shetgaonkar, received the

sealed drugs along with the letter on 14th January, 2001. The said letter is at Exh.13. P.W.2, Krishna Shetgaonkar, has acknowledged the receipt of the drugs on the said letter. On the next day i.e. on 15th January, 2001, he forwarded the drugs for analysis to the Director of Food and Drugs Administration, Panaji.

5. The drugs were received by the Director of Food and Drugs Administration, Panaji, on 15th January, 2001, and on the same day were analysed by P.W.1, Mahesh Kaissare. Exh.10 colly is the covering letter and the specimen sealed letter. P.W.1, Mahesh Kaissare, weighed the said substance and he found it to weigh 2.440 kgs. P.W.1, Mahesh Kaissare, examined 500 gms. as a representative sample for analysis. By his report at Exh.11, he opined that the sample analysed by him tested positive for charas. After completion of the investigation, a charge-sheet against the present Appellant/Accused came to be filed.

6. The learned Special Judge, Narcotic Drugs and Psychotropic Substances Court, Mapusa, Goa, vide Exh.6 framed a charge against the Appellant/Accused for an offence punishable under Section 20(b)(ii) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The prosecution in support of its case examined

5 witnesses. The defence of the Appellant/Accused is of denial. On appreciation of the evidence, the learned Trial Court convicted and sentenced the Accused as aforestated.

7. In the cross-examination, P.W.4, P.S.I. Uday Naik, has admitted that he had received the information at 1 p.m. and of which he made a record in the station diary. He has also admitted to have made a record of the timing in the station diary regarding the receipt of the reliable information. The witness was directed to produce the station diary which he produced on the next date. He has admitted that P.W.3, Francis Fernandes, acted as a panch in a drug case. P.W.4, P.S.I. Uday Naik, has also admitted that he had orally told the panch about the information but had not shown them the information which he had reduced into writing. He has admitted that the weighing scale which he was carrying was a common weighing balance and he had carried three weighing scales with pans of different sizes. He has also admitted that the seal of the Anti Narcotic Cell Police Station Panaji, Goa-2 is allotted to him and the seal is normally in his possession but after the raid, it is handed over to the Dy.S.P. of Anti Narcotic Cell. He has also admitted that he had introduced P.W.5, Dy.S.P. Finton D'Souza to the

Accused as a member of the raiding party without mentioning his designation as Dy.S.P. He has also reproduced the exact words used by him in conveying the right to the Accused. He was asked to explain the discrepancy in the weight and he answered that the Scientifific Officer was using an electronic scale while the raiding party was using a common balance.

8. P.W.3, Francis Fernandes, states that on 13th January, 2000, a Constable had asked him to come to the Anti Narcotic Cell Police Station. There he met P.W.4, P.S.I. Uday Naik. He then states about P.W.4, P.S.I. Uday Naik informing the panch about the information received by him and of sending a copy of the said information to P.W.5, Dy.S.P. Finton D'Souza. He further states that the panchas along with the Police set out for raid. They reached Baga, Calangute Bridge at 6.30 p.m. and concealed their presence. At about 8.45 p.m. they saw two persons walking towards the Baga Bridge. On seeing the said persons, P.W.4, P.S.I. Uday Naik, told the members of the raiding party that the description of the persons received by him tallied with the persons seen walking. The members of the raiding party then immediately rushed towards them and surrounded them. P.W.4, P.S.I. Uday Naik, introduced himself and informed the said two persons regarding the receipt of the prior

information. P.W.4, P.S.I. Uday Naik, also asked the said two persons their names. P.W.4, P.S.I. Uday Naik, then introduced the members of the raiding party. P.W.3, Francis Fernandes, has identified the Accused during the trial as one of the persons who was accosted. P.W.4, P.S.I. Uday Naik, informed the Accused that he had a right to be searched before a Gazetted Officer or a Magistrate but the Accused declined the said offer. The Accused also declined the offer to search the panchas and the members of the raiding party. P.W.4, P.S.I. Uday Naik, then asked the Accused to hand over the bag which he was carrying in his right hand. The search of the bag yielded blackish colour substance in different shapes and sizes some wrapped in polythene paper and without covering. On observing the said substance, P.W.4, P.S.I. Uday Naik, informed the panchas that it was suspected to be charas. All the pieces were then weighed and found to weigh 2.4 kgs. The substance was then put back in the cotton bag and thereafter in an envelope and was packed and sealed with the seal of Anti Narcotic Cell Panaji, Goa-2 with Ashoka Emblem at 7 places. The envelope was signed by the two panchas P.W.4, P.S.I. Uday Naik and the Accused. On failure of the Accused to produce the necessary documents, he was arrested after explaining the ground of arrest. He has stated that a panchanama at Exh.16 was drawn.

9. In the cross-examination, P.W.3, Francis Fernandes, has admitted that he was doing the business of construction and on the said day he was returning home on his scooter. He has also admitted that he knew the Constable who had called him to act as panch by face for about 1 1/2 years. There was no friendship between the said Constable and P.W.3, Francis Fernandes. He has admitted that he knew P.W.4, P.S.I. Uday Naik, earlier since he had acted as a panch in one drug case. He has denied the suggestion that he had acted as a panch witness on several occasions at the instance of the Police. He has also admitted that the seal was carried by P.W.4, P.S.I. Uday Naik, who had shown the seal when he was sealing the substance. He has also admitted that P.W.4, P.S.I. Uday Naik, told the Accused that he could take a search of the Police party and also he had a right to be searched before a Gazetted Officer or a Magistrate. He also admitted that he could not reproduce the Hindi words used by P.W.4, P.S.I. Uday Naik while making the offer to the Accused. He has denied the suggestion that he was deposing falsely at the instance of the Police.

10. P.W.5, Dy.S.P. Finton D'Souza, states about prior information received by P.W.4, P.S.I. Uday Naik and P.W.4, P.S.I. Uday Naik handing over a copy of

the same to him. He further states about proceeding for raid and apprehension of the Accused and the seizure of the drugs. He also states about P.W.4, P.S.I. Uday Naik, apprising the Accused regarding his right to be searched either before a Gazetted Officer or a Magistrate. He states that after returning to the Police Station, P.W.4, P.S.I. Uday Naik, handed over the seal of Anti Narcotic Cell Panaji, Goa-2 with Ashoka Emblem under a letter Exh.19. He also states about the intimation under Section 57 of the Narcotic Drugs and Psychotropic Substances Act, 1985 given by P.W.4, P.S.I. Uday Naik.

11. Miss Amira Razak, learned Counsel appointed from the Legal Aid Panel for the Appellant has submitted that there is discrepancy in the weight vis a vis the weight as stated by P.W.4, P.S.I. Uday Naik and the weight of the substance as stated by P.W.1, Mahesh Kaissare. The learned Counsel has also urged that there is non compliance of Section 50 of the Narcotic Drugs and Psychotropic Sybstances Act, 1985 as the panch witness P.W.3, Francis Fernandes, could not reproduce the exact words used in conveying the right under Section 50.

12. The discrepancy in the weight has been explained by P.W.4, P.S.I. Uday Naik himself in the

cross-examination. He was asked about the discrepancy in the weight in the cross-examination and he has stated that the discrepancy may be because the Scientific Officer was using an electronic scale whereas the Police Officers were using a common balance. Even otherwise, the discrepancy is extremely minor as according to P.W.4, P.S.I. Uday Naik, the substance when weighed, weighed about 2.4 kgs. while P.W.1, Mahesh Kaissare found the weight of the substance to be 2.440 kgs. Thus, the discrepancy is only of .04 kgs. The discrepancy in the weight has been adequately explained by P.W.4, P.S.I. Uday Naik in the cross-examination and there is no further cross-examination to discredit what he has stated. P.W.4, P.S.I. Uday Naik, has stated the exact words used by him to convey to the Accused the right under Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985. The panchanama recites that the Accused was informed about his right. P.W.3, Francis Fernandes, the panch witness has also stated that the Accused was informed that he had a right to be searched before a Gazetted Officer or a Magistrate. However, P.W.3, Francis Fernandes, could not reproduce the exact Hindi words used by P.W.4, P.S.I. Uday Naik to convey the right to the Accused. That however does not affect the evidence of P.W.4, P.S.I. Uday Naik regarding apprising the Accused of Section 50 of the

Narcotic Drugs and Psychotropic Substances Act, 1985. Both the witnesses namely P.W.3, Francis Fernandes and P.W.4, P.S.I. Uday Naik have not been shaken in the cross-examination and no material has been brought on record which would affect their veracity. Thus, there is sufficient evidence on record in respect of compliance of Section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

13. After giving my anxious consideration to the evidence on record, according to me, the Judgment of the learned Trial Court convicting and sentencing the Accused as aforestated does not require any interference. The Appeal is devoid of any merit and the same deserves to be dismissed.

14. Accordingly, Criminal Appeal No.10 of 2003 is dismissed. Since the Appellant is in Jail, a copy of the Judgment be sent to the Appellant.

P. V. HARDAS, J.

RD.